

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0538

IN THE MATTER OF

JOSE AND MARIA SILVA
LANGWORTH DAIRY
5306 LANGWORTH ROAD
OAKDALE, STANISLAUS COUNTY

This Complaint is issued to Jose and Maria Silva, owners and operators of Langworth Dairy (hereafter Discharger), pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability for a discharge of waste to surface waters. This Complaint is based on findings that the Discharger violated the CWC and Waste Discharge Requirements General Order for Existing Milk Cow Dairies Order No. R5-2007-0035 (General Order).

The Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger is Jose and Maria Silva, owners and operators of Langworth Dairy, located at 5306 Langworth Road, Oakdale, California.
2. The Langworth Dairy is a 550 milk cow dairy facility with a 17-acre production area and 55 acres of cropland currently used for manure application (wastewater and solids). The dairy is located east of Langworth Road and north of Claribel Road. Wastewater from the dairy is collected in wastewater retention ponds, where it is periodically discharged to cropland.
3. On 3 May 2007, the Central Valley Water Board adopted the General Order. This order serves as general waste discharge requirements for discharges of waste from existing milk cow dairies of all sizes (as defined in Finding 7 of the General Order), including the Langworth Dairy. The Langworth Dairy was notified of its coverage under the General Order on 3 July 2007.

BACKGROUND

4. On 8 March 2008, Department of Fish and Game staff conducted an investigation concerning wastewater in the Cavill Drain at Langworth Road. Department of Fish and Game staff determined that the Langworth Dairy was the source of a discharge of wastewater to the Cavill Drain.
5. The Discharger applies wastewater to a field. At the end of the field, open pipes allowed wastewater runoff to enter into the Cavill Drain. The Cavill Drain flows into the Modesto Irrigation District Canal, which then flows west and enters the Stanislaus River.

6. Central Valley Water Board staff conducted a site inspection on 10 March 2008 to discuss the discharge with the Discharger and to confirm that the discharge had ceased. The 10 March 2008 inspection disclosed that the dairy irrigated the fields by irrigating half of the fields with wastewater, and then turning off the supply valves. The water would progress down the graded fields, and would usually be absorbed by the time it reached the lower portion of the fields, thereby keeping the water out of the Cavill Drain. However, because open pipes at the end of the field would allow wastewater to enter the Cavill Drain, over-applying wastewater had the potential to result in a discharge to the Cavill Drain. The Discharger informed staff that grant funding had been awarded for a tailwater return system, which would ensure that, even if irrigation practices resulted in the over-application of wastewater, there would not be any discharge to the Cavill Drain. The Discharger told Board staff that they were planning on installing this system once the oat crop had been harvested, but that this system was not in place at the time of the discharge.
7. On 8 March 2008, five (5) water samples were collected by Department of Fish and Game, and tested by Fish and Wildlife Water Pollution Control Laboratory. All but the sample collected upstream from the discharge were determined to be deleterious to aquatic organisms living in waters of the state.

Sample Identification/ Location	Date	Time	EC (µs/cm)	pH	Temp (degrees Celsius)	Undissociated Ammonia as NH3 (mg/L)	Ammonia as N (mg/L)
1. Upstream Control East of Fence Line E/S Culvert	3/8/08	17:43	195	9.21	17.9	0.046	0.158
2. Discharge From White Pipe into Cavill Drain	3/8/08	17:52	7793	8.32	13.0	17.9	417
3. Field Side of White Pipe (Discharge)	3/8/08	17:57	7806	8.37	12.8	20.0	418
4. Discharge Below Blue Pipe into Drain	3/8/08	18:01	8093	12.9	8.39	24.2	452
5. Field Side of Blue Pipe	3/8/08	18:07	8163	8.31	12.7	20.0	465

These samples provide evidence of a discharge from the Discharger's property that affected surface waters.

8. On 1 April 2008, Board staff issued the Discharger a written Notice of Violation letter, giving notice of the violations that have led to the issuance of this Complaint.
9. In May 2008, the Discharger contacted staff to inform the Central Valley Water Board that the tailwater return system was installed. Staff conducted an inspection on 10 June 2008 and confirmed that the system was installed. The tailwater return system was placed at the end of the field where the discharge occurred. The pipes

that allowed the wastewater to escape during the discharge were removed. Wastewater from the field now collects in a ditch that runs along the edge of the field. The Discharger can then pump wastewater from the ditch back into the wastewater retention ponds, effectively keeping liquid and solid manure out of the Cavill Drain.

LEGAL AUTHORITY

10. CWC section 13385 states, in relevant part:

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

...

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.

...

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

...

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

11. The General Order, Prohibition A.10 states, in part:

The discharge of wastewater to surface waters from cropland is prohibited.

12. The General Order does not authorize the discharge of waste to surface waters. Any discharge of waste to surface waters is a violation of the Clean Water Act, section 301. CWC section 13385 authorizes the imposition of administrative civil liability for such violations.

13. **Maximum Civil Liability for Discharge to the Cavill Drain:** Per CWC section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per violation per day, plus \$10 per gallon for each gallon of waste discharged over 1,000 gallons. For the purposes of this Complaint, the Central Valley Water Board has not performed an estimation of the number of gallons of waste that may have been discharged to the Cavill Drain, because the proposed penalty falls below the maximum that could be charged based only on one violation. As such, the maximum penalty for the purposes of this complaint is ten thousand dollars (\$10,000 x one (1) day of discharge = \$10,000). Should this matter proceed to a hearing before the Central Valley Water Board, the Board's enforcement team reserves the right to perform a per-gallon estimation of the amount of waste discharged to the Cavill Drain, which would raise the maximum potential penalty.
14. **Minimum Civil Liability for Discharge to the Cavill Drain:** Pursuant to CWC section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The Central Valley Water Board considers the economic benefit derived from the acts that constitute the violation to be equal to the deferred costs of delaying the installation of the tailwater return system described in Finding 9. This cost is estimated to be below the proposed penalty.
15. After fully considering all the factors specified in CWC 13385(e), the Central Valley Water Board proposes to impose Administrative Civil Liability in the amount of **five thousand dollars (\$5,000)**.
16. The Central Valley Water Board recognizes that the facility, after the upgrades described in Finding 9, is not "designed, constructed, operated, and maintained" to discharge to surface waters. The Board does not believe that the Discharger is required to obtain a NPDES permit for the facility, and that continued compliance with the General Order will sufficiently protect waters of the state.
17. Issuance of this Administrative Civil Liability Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321 (a) (2).

JOSE AND MARIA SILVA AND LANGWORTH DAIRY ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **five thousand dollars (\$5,000)**. The amount of the proposed liability is based upon a review of the factors cited in CWC section 13385(e), as well as the State Water Resources Control Board's Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.

2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **13/14 August 2009**, unless the Discharger agrees to do either of the following by **15 June 2009**:
 - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **five thousand dollars (\$5,000)**; or
 - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is conducted, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, which may include raising the monetary value of the civil liability, or whether to refer the matter to the Attorney General for judicial enforcement.

original signed by

PAMELA C. CREEDON, Executive Officer

15 May 2009

Date

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Jose and Maria Silva (hereafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2009-0538 (hereafter "Complaint");
 2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
 3. I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
 4. ☐ ***(Check here if the Discharger will waive the hearing requirement and will pay the fine)***
 - a. I certify that the Discharger will remit payment for the proposed civil liability in the amount of **five thousand dollars (\$5,000)** by check, which will contain a reference to "ACL Complaint R5-2009-0538" and will be made payable to the "*State Water Pollution Cleanup and Abatement Account.*" Payment must be received by the Central Valley Water Board by **15 June 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **13/14 August 2009** Central Valley Water Board meeting.
 - b. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.
- or-**
5. ☐ ***(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)*** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
 6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)